BUILDINGS DEPARTMENT (BD)

Case No. OMB 2001/2498

BD – advisory letters – impropriety in handling the repair of a party wall – partially substantiated

An estate management company ("EMC"), on behalf of an Owners' Corporation ("the complainant"), complained that BD had wrongly held the complainant as the owner of a party wall; failed to respond to its request to clarify the ownership of the wall; and changed its view on the structural condition of the wall when Government was found to be the owner.

2. During a routine inspection of a party wall in December 1998, BD found some minor defects which, however, did not pose any imminent structural danger. In January 1999, BD issued an advisory letter requiring the complainant to repair the wall.

3. EMC wrote to BD in March 1999 to clarify the ownership of the wall. EMC wrote again in June and September 1999, expressing concern over its structural safety.

4. During another inspection in September 1999, BD found some minor defects on the wall, but there was still no imminent structural danger. Noting that the profile of the wall on site differed from that on the approved plan, BD discovered that the wall stood partly on an area surrendered to Government for road widening in 1988.

5. BD then inquired with Lands Department ("Lands D") about the land status and maintenance responsibility of the wall. Meanwhile, BD reaffirmed to EMC that there was no immediate structural danger and no further action would be contemplated. However, BD did not reply EMC or pursue the matter further even after Lands D's reply. It was not until June 2001 when a District Office referred the case to BD that the Department resumed correspondence with Lands D about the maintenance of the wall.

6. In October 2001, on the request of BD, Lands D advised EMC that there was *prima facie* evidence that the exposed portion of the wall was within Government land. In April 2002, Lands D repaired the party wall.

7. BD explained that ownership check was required only when a statutory order was issued under the Buildings Ordinance. Advisory letters were normally served to urge owners to undertake timely action, such as repairs and maintenance. As the letters were non-statutory, they were not served on named owners, but to the management or incorporated owners of the building concerned.

8. BD had not responded to the request to clarify the ownership of the wall. This was contrary to good administrative practice. BD should have responded after examining the relevant land status records in both March and October 1999. There was, therefore, undue delay in reply.

9. BD contended that ownership of the party wall did not affect the Department's assessment of safety condition. This Office noted that BD's assessment of the structural safety of the wall was consistent.

10. The Ombudsman considered this complaint partially substantiated.

11. This Office considered it important to verify ownership even before the issue of advisory letters. The Ombudsman urged BD to expedite implementation of Government's plan, announced in April 2001, to confer statutory status to advisory letters for more effective deterrent against illegal structures. This Office, therefore, recommended that BD examine the feasibility of extending this measure beyond illegal structures to cover general building safety and maintenance.

12. BD concurred with our conclusions and agreed to take the following action –

(a) amend the law to upgrade advisory letters on unauthorised building works to statutory warning notices, registrable against property titles;

(b) explore the feasibility of extending this concept to advisory letters for building defects;

(c) review the need to verify ownership before the issue of advisory letters requiring building repairs; and

(d) remind staff to pay particular attention to structures straddling across different lots and to confirm land status and maintenance responsibility where necessary.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

BUILDINGS DEPARTMENT (BD) AND LANDS DEPARTMENT (Lands D)

Case No. OMB 2001/0542
OMB 2001/0929

BD and Lands D – New Territories exempted houses – failing to follow up the complaint properly – unsubstantiated

In early 2000, the complainant complained to District Lands Office ("DLO") against unauthorised building works ("UBW") in a building. As the owner had not submitted a building plan or applied for a Certificate of Exemption in accordance with the Building Ordinance (Application to the New Territories) Ordinance ("NT Ordinance"), DLO informed the complainant that the case had been referred to BD for follow-up action. Later, the complainant telephoned BD alleging that unauthorised structure was found not only in the said building but in the whole village as well. In the absence of development plan or approved plan of the building, BD considered that this

was a New Territories exempted house ("NTEH") under the jurisdiction of Lands D. In June 2000, BD informed DLO that it would not take any control action.

2. In early 2001, the complainant repeated his complaint to BD. After a second inspection, BD considered the building had no apparent structural danger. BD could not conduct a detailed assessment without any plan or information on the structural details of the building. In May 2001, BD informed DLO of the result and reiterated that it would not take any action. The complainant was informed accordingly.

3. Under existing policy, the construction of private buildings was governed by the Buildings Ordinance or Buildings Ordinance (Application to the New Territories) Ordinance. Buildings in the New Territories which satisfied certain criteria could be exempted from some of the requirements of the Buildings Ordinance, e.g. to seek the approval of the Building Authority on the building plan and construction work, to apply for an occupation permit before intake. These buildings were classified as NTEH.

4. All NTEH were governed by the land grant conditions under the administration of Lands D and regulated by the NT Ordinance. Before commencement of construction, owners had to obtain certificates of exemption from Lands D. Lands D could invoke the lease condition and require owners to remove UBW from NTEH. The Department could also appoint Government contractors to remove the structure with the costs borne by the owners. BD would only take control action under the Building Ordinance when the building was not governed by the NT Ordinance.

5. In theory, departments could take enforcement action against UBW in accordance with relevant legislation or lease conditions. However, because of limited resources and the scale of the problems, departments had to set priorities on the clearance of UBW. The tackle of UBW in NTEH was rather slow and had not been very successful.

6. Between 1993 to 1995, BD had tried to take control action against UBW on behalf of Lands D. Thereafter, although Lands D continued to refer cases to BD, the latter could only conduct inspections when safety was involved to assess whether prompt action was required. Housing, Planning and Lands Bureau ("HPLB") had set up an inter-departmental working group in mid-2001 to formulate policy objectives on UBW in NTEH.

7. We understood the complainant's dissatisfaction. However, we were aware that without the necessary policy and resources, departments could not tackle the UBW problem effectively. Therefore, The Ombudsman considered the complaint unsubstantiated.

8. In view of the extent of the UBW problem in the New Territories, The Ombudsman recommended that HPLB, BD and Lands D should formulate long-term policies as possible as possible to contain or resolve the problem. We would follow up the progress with HPLB.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

DRAINAGE SERVICES DEPARTMENT (DSD), HOME AFFAIRS DEPARTMENT (HAD) AND LANDS DEPARTMENT (Lands D)

Case Nos. OMB 2001/3407
OMB 2001/3408
OMB 2002/0472

DSD, HAD and Lands D – repair of stream bank /retaining wall – evading responsibility – partially substantiated

The complainant complained against DSD, HAD and Lands D for evading their responsibilities to repair a damaged stream bank/retaining wall.

2. In June 2002, the complainant notified DSD that the stream bank adjacent to his house had been seriously eroded. After a site inspection, DSD informed the complainant that the case had been referred to a District Office ("DO") of HAD for action. Noting that no public facilities were affected and considering that its Local Public Works funds could not be used for the benefits of individuals, DO informed the complainant that it would not repair the bank.

3. DSD maintained that in accordance with Technical Circular, WBTC 8/2000, DO was responsible for the maintenance of natural watercourses. Between June 2000 and June 2001, DSD and DO engaged in a year-long argument. In November 2000, DO checked the ownership of the lot with a District Lands Office ("DLO") of Lands D. In April 2001, DO asked DLO if the licensee of the lot was responsible for the repair. After a site inspection, DLO replied in May 2001 that it could not ascertain the maintenance responsibility. In June 2001, DO asked DLO to liaise with the licensee to strengthen the foundation of the retaining wall (originally described as "a stream bank"). DLO marked the file for action in three months while awaiting the outcome of the argument between DO and DSD.

4. As a result of DO's repeated requests, DLO carried out another site inspection in August 2001. In October 2001, DLO informed DO that the licensee would normally be responsible for the maintenance works, but it would consult the Geotechnical Engineering Office ("GEO") of Civil Engineering Department on whether urgent repair was required. In November 2001, GEO confirmed that this was the case, but the licensee was not responsible as the retaining wall was on Government land. Lands D undertook the repairs in accordance with the Slope Maintenance Responsibility Information System. Lands D completed the repair in early March 2002.

5. Although there was no evidence of wilful or deliberate disregard of duty, The Ombudsman was disappointed by the Departments' compartmental mentality in processing this case. The three Departments separately conducted five site inspections from June 2000 to August 2001 but did not attempt any joint inspection or meeting. Each Department was concerned only with its own interests and did not take a broader outlook or a more proactive and co-operative approach. They fell short of taking a step further in the interest of the complainant.

6. Though DSD had followed the procedures laid down in WBTC 8/2000, this circular was actually not applicable to this case. Seventeen months was taken to establish the responsibility for maintenance of the retaining wall because early action was not taken to check the land status, to verify the maintenance responsibility and to seek the advice of GEO.

7. In response, DSD pointed out that a thorough land status check before referring complaints to responsible departments for follow-up action would result in delay. Lands D maintained that DLO did not have a clear picture of matters until mid-2001 and that either DSD or DO could have assumed the initial co-ordinating role in this issue.

8. The Ombudsman found the complaint partially substantiated.

9. We made seven recommendations to the Departments : to review procedures on how to co-ordinate actions for complaints involving more than one department; to consider checking land status, to arrange joint inspections and meetings at an early stage; to require staff to adopt a vigilant, positive and proactive attitude in processing complaints and enquiries from the public and other departments. In addition, the departments concerned should clarify, in conjunction with the policy bureau, the maintenance responsibility of natural watercourses to prevent recurrence of similar disputes.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

DRAINAGE SERVICES DEPARTMENT (DSD), WATER SUPPLIES DEPARTMENT (WSD) AND THE TREASURY

Case No. OMB 2002/0035
OMB 2002/0958
OMB 2002/2523

DSD – opening of account – delaying the issue of demand note on trade effluent surcharge – unsubstantiated

WSD – opening of account – failing to supply relevant information to DSD for opening a trade effluent surcharge account – unsubstantiated

Treasury – design of computer system – failing to take remedial action when errors developed in the computer system – unsubstantiated

The complainant had been in the restaurant business for many years. In late 2001, he received a demand note on trade effluent surcharge ("TES") from DSD for the period September 1996 to October 2001.

2. The complainant pointed out that WSD had conducted a site inspection on his application for the water meter concerned. The Department should, therefore, be aware of the nature of his business and supply the information to DSD. However, DSD had not registered his account under the restaurant category. Since the computer system transmitting information between WSD and DSD was designed by the Treasury, the complainant alleged that there was also impropriety on the part of the Treasury.

3. In 1994, the Treasury designed a computer system to transmit relevant water accounts from WSD's Water Billing and Information System ("WIS") to the TES billing system to facilitate DSD to set up TES accounts. WSD and DSD were responsible for updating data and operating the system.

4. In July 1998, the Treasury learned that WIS had omitted to transmit certain existing accounts to the TES system. To rectify, the Treasury set up a new computer programme to transmit relevant data from WSD's water and TES bills to the TES system. DSD would follow up when TES accounts should have been, but were not yet, set up.

5. However, in August 2000, omissions were discovered again. The Treasury adjusted the system to allow DSD to speed up the detection of omissions.

6. When WSD created a new account for the complainant, it had input his business category – "Restaurants – Chinese" – into the computer system. As WSD had taken proper action and the non-transmission of data to the TES system was due to system error, The Ombudsman considered the complaint against DSD and WSD unsubstantiated.

7. During the commissioning stage of the computer, the Treasury had in conjunction with departments concerned conducted trial runs of the system. As the design of computer systems was a professional and technical issue, this Office would not comment. However, we noted that when omissions were detected, the Treasury had advised DSD to follow up. Since the number of TES accounts constituted less than 1% of all the water accounts, this Office considered it more efficient and practical for the Department to introduce remedial measures than to design a new computer system. The Ombudsman, therefore, considered the complaint against the Treasury unsubstantiated.

8. The Ombudsman made the following recommendations to the Treasury and DSD –

(a) the Treasury should apologise to the complainant for the inconvenience caused;

(b) the Treasury should conduct thorough trial run of new computer systems and consider monitoring their operations jointly with user departments at the initial stages so that prompt action could be taken on detection of problems; and

(c) DSD should explain to consumers why the surcharge could not be levied earlier and advise them to apply for payment by instalments if they had financial difficulties.

9. DSD added that since March 2001, all similar omissions had been rectified. Back dating of surcharge for a long period should, therefore, not recur.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

FIRE SERVICES DEPARTMENT (FSD)

Case No. OMB 2002/1497

FSD – licence application – (a) failing to handle the complainant's plan properly and losing the plan; and (b) failing to take action to locate the plan – substantiated

The complainant, acting on behalf of his client, applied to Food and Environmental Hygiene Department ("FEHD") for a General Restaurant Licence. In mid-March, the complainant submitted a plan to FEHD for referral to Buildings Department and FSD. On several occasions between mid-April and early May, the complainant asked FSD for progress and was informed that the Department had not yet received the plan from FEHD. The complainant alleged that FSD had failed to handle the plan properly and did not take the initiative to clarify with FEHD.

Complaint (a)

2. FEHD had delivered the complainant's plan to FSD in early April and FSD acknowledged receipt. In late April, the restaurant applicant wrote to FSD, enclosing a copy of FEHD's letter confirming that the plan had been referred to FSD. Noting this, staff A of FSD took the initiative to contact and advise the complainant to re-submit the plan as soon as possible. The second copy of the plan submitted by the complainant was referred by FEHD to FSD in early May. On receipt of the second plan, Staff B of FSD could not locate the subject file and so placed the plan in a "pending" tray. He forgot to take action until mid-May when his supervisor instructed him to open a temporary file. Action was then taken to process the application immediately and the complainant was informed of the results in late May.

3. The first plan could not be located and FSD did not know why it was lost or who should be held responsible. While the loss of the plan might be an isolated incident, FSD was at fault as it had been duly delivered to the Department.

4. When staff B could not locate the file, he should have opened a temporary file to facilitate follow-up action or sought advice from his supervisor. The Department admitted that there was impropriety on the part of staff B in handling the second plan.

5. This complaint point was substantiated.

Complaint (b)

6. When the complainant enquired about the progress of his application in mid-April, staff A told him to check with FEHD, saying that they had not received the plan. When the complainant telephoned in early May, after checking with staff B, staff A informed the complainant that the plan had not been received.

7. Staff A had been alerted by the complainant that FEHD had twice delivered the complainant's plan to his Department. However, he took no initiative to check with FEHD but advised the complainant to contact FEHD direct. Had staff A sought earlier clarification from FEHD, the complainant would not have felt so aggrieved.

8. FSD's performance pledges stipulated that applicants should be informed of the results of their applications within 22 working days of the receipt of the necessary plans. With the second plan delivered in early May, FSD did not breach its performance pledges for having replied the complainant in late May. However, FSD could have replied to the complainant much earlier had the first plan not been misplaced and staff A taken the initiative to clarify with FEHD.

9. This complaint point was substantiated.

10. FSD had taken action to improve its internal procedures on the handling of documents and instructed the staff concerned accordingly.

This case highlights The Ombudsman's role in ensuring that bureaucratic constraints do not interfere with the provision of reasonable services to the public.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD)

Case No. OMB 2002/1277

FEHD – complaints handling – (a) failing to follow up a complaint properly; and (b) failing to give the complainant an interim reply – partially substantiated

The complainant lodged a complaint with FEHD against a newspaper stall for obstructing the pavement. A district office of FEHD conducted a site inspection but considered the obstruction minor and issued a verbal warning. As the obstruction persisted, the complainant felt that the district office did not handle his complaint seriously and filed an appeal with FEHD's Complaints Management Section ("CMS"), requesting the assignment of a new investigation officer. The CMS indicated that they would follow up the case and reply to him. He was not contacted until one month later. The complainant was dissatisfied that the CMS did not investigate his complaint but referred it back to the district office.

Complaint (a)

2. FEHD's normal practice was for district offices to handle complaints relating to environmental hygiene while the CMS would only co-ordinate and monitor staff-related complaints. As CMS staff had already explained this division of responsibilities to the complainant, the appeal was referred back to the district office for investigation. Having reviewed the case, the district office considered the original action quite proper. The complainant was so informed via the CMS.

3. However, the complainant considered that the CMS should have taken up the appeal directly because he had specifically made it clear that he "hoped the head office would designate another officer to conduct the investigation as district office staff might cover up each another". He contended that the CMS had not explained the division of responsibilities to him. As there was no evidence to support either party's allegation, this Office could not come to any judgement on this point.

4. FEHD had not considered whether the complainant's request was reasonable or not. Even if the complainant had already been informed of the arrangements for referral, in view of his objection, FEHD should have given advance notice of the referral and offered explanation to the complainant. Complaint point (a) was, therefore, partially substantiated.

Complaint (b)

5. FEHD admitted that the CMS had not contacted the complainant or given an interim reply within ten days, as prescribed in the performance pledge. The Department argued that an interim reply served to let the complainant know which case officer to communicate with. During the first telephone call, CMS staff had already informed the complainant that follow-up action would be taken so that an interim reply was not necessary.

6. FEHD's performance pledge clearly stated that the Department would contact or reply complainants within ten days and that an interim reply would be issued, where necessary. An interim reply was not only an acknowledgement to notify the point of contact, but also to update on the progress and to let the complainant know that a detailed reply would be forthcoming. Complaint point (b) was, therefore, substantiated.

7. The Ombudsman concluded that, overall, the complaint was partially substantiated.

8. The Ombudsman proposed that FEHD should –

(a) apologise to the complainant for failing to issue an interim reply;

(b) urge all staff members to observe the performance pledge on the issue of reply or interim reply; and

(c) review departmental guidelines and circulars on complaint handling for regular circulation so that staff members clearly understood the proper procedures.

9. FEHD had implemented recommendations (a) and (b) and started the review into the guidelines and circulars on complaint handling.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency and that wrongs are righted.

HOME AFFAIRS DEPARTMENT (HAD) AND LEISURE AND CULTURAL SERVICES DEPARTMENT (LCSD)

Case Nos. OMB 2002/0494
OMB 2002/0495

HAD – installation works – delay in the installation of warning signs against roller-skating, cycling and skateboarding – substantiated

LCSD – installation works – delay in the installation of warning signs against roller-skating, cycling and skateboarding – unsubstantiated

In November 1999, the complainant requested HAD's Tai Po District Office to install warning signs to advise the public against roller-skating, cycling and skateboarding in the open space off Tai Po Centre. However, it was not until April 2002 that two signs were erected.

2. This Office found that the delay had been caused by breakdown of communication between HAD and LCSD. In October 2000, HAD wrote to LCSD about the proposed installation. LCSD responded regarding the wording and location of the signs. Claiming that it did not receive the reply, HAD wrote to LCSD again and followed up with three reminders. However, LCSD received only the last one. HAD admitted that the delay had resulted from the subject officer being on leave at the material time.

3. This Office considered that instead of relying solely on reminders to monitor progress, HAD should have checked with LCSD by telephone. Furthermore, when a subject officer was on leave, the supervisor should monitor developments regularly.

4. The Ombudsman considered the complaint against HAD substantiated.

5. The complaint against LCSD was unsubstantiated for lack of evidence that the Department had delayed the processing of the proposed installation.

6. The Ombudsman recommended that HAD should –

(a) regularly instruct its staff to follow up closely each and every case; and

(b) review the procedures to ensure speedy processing of the installation of warning signs.

7. We also proposed that both Departments should review their receipt and despatch systems to ensure the proper transmission of documents.

8. LCSD and HAD accepted the conclusions and had taken action to implement the recommendations. HAD admitted that the processing of the case should bear improvement and apologised to the complainant.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

HONG KONG HOUSING AUTHORITY (HKHA) AND HOUSING DEPARTMENT (HD)

Case No. OMB 2002/1204
OMB 2002/1975

HKHA – sell-back of Home Ownership Scheme flat – (a) misleading the complainant about the reinstatement requirements – unsubstantiated

HD – sell-back of Home Ownership Scheme flat – (b) misleading the complainant about the arrangements for flat inspection resulting in premature vacation; (c) delaying the inspection process on the excuse that inspection had to be after execution of assignment had been confirmed; (d) unreasonably discarding a wooden door resulting in higher reinstatement cost; (e) not informing the complainant about the imposition of 20% on-cost for reinstatement works carried out by HD; and (f) inefficiency in providing the quotation for the reinstatement works – partially substantiated

The complainant was the former owner of a Home Ownership Scheme ("HOS") flat. When she sold her flat back to HKHA, she was not informed that the flat had to be reinstated. She alleged that HD, the executive arm of HKHA, had misled her on the inspection procedures; delayed inspection of her flat; unreasonably discarded a wooden door without prior notice, thus increasing the reinstatement cost; and took a long time over the quotation of cost.

Complaint (a)

2. The HOS sale brochure and application form as well as the sale and purchase agreement had stated clearly that flats for sell-back had to be reinstated. This complaint point was unsubstantiated.

Complaint (b)

3. When the complainant was told that "the flat has to be cleared of everything before the Department would conduct the inspection", she assumed that HD would inspect to confirm the reinstatement cost as soon as she vacated the flat. Anxious to confirm the reinstatement costs, she vacated the flat two months before completion of transaction and asked HD to conduct the inspection. HD refused as it would only conduct the inspection after a date was set for the execution of assignment.

4. HD's practice was to conduct a preliminary inspection, on request, to advise owners of the fixtures to be removed or reinstated. The reinstatement costs could only be confirmed after final inspection of the vacant flat, normally conducted about ten days before the execution of assignment. As the complainant had refused a preliminary inspection and insisted on HD confirming the reinstatement cost, HD assumed that she was referring to the final inspection.

5. This Office considered it reasonable to conduct the final inspection after a date was set for the execution of assignment. The misunderstanding over inspection arrangements could have been avoided if HD had informed the complainant in writing of the different arrangements for the two types of inspection. Nevertheless, as HD was following established procedures, this complaint point was unsubstantiated.

Complaint (c)

6. Premature recovery of the flat might generate problems over the responsibility for the management of the flat. In its letter accepting sell-back, HD had made it clear that it "would arrange for final inspection…about ten days before the execution of the Deed of Assignment." HD had no intention to delay the inspection process. This complaint point was unsubstantiated.

Complaint (d)

7. The door concerned could not be re-used as the laminated board at the back had been removed and the lock replaced. Hence, this complaint point was unsubstantiated. However, had there been advance written notice on the reinstatement requirements, the complainant might not gain the wrong impression that the door had been discarded to increase the reinstatement cost.

Complaint (e)

8. HD operational guidelines required staff to examine the flat carefully and ask the owner to sign a consent form to confirm the reinstatement items at the final inspection. A quotation of the reinstatement cost would be issued within seven days of the final inspection.

9. HD staff had asked the complainant to sign on the quotation sheet which did not provide any information on the reinstatement cost during the final inspection. The cost was entered subsequently and the completed quotation sheet issued to the complainant two hours after signing the Deed of Assignment.

10. HD staff maintained that the complainant had been verbally informed about the on-cost. She was reminded again during the final inspection. In the absence of an independent witness, this Office could not ascertain whether the complainant had been alerted of the on-cost before the inspection. However, the quotation sheet signed by the complainant was clear about the imposition of on-cost. The complainant, therefore, should have been aware of the on-cost before she signed the document. This complaint point was thus unsubstantiated.

Complaint (f)

11. HD staff had not followed the relevant internal guidelines by asking the complainant to sign the quotation sheet and not the consent form. This way, she was deprived the right to object to the quotation. Moreover, the completed quotation sheet was not given to the complainant until after the execution of assignment. Although this was issued within seven days of the final inspection, thus meeting the departmental guidelines, the purpose of issuing the quotation was defeated. This Office considered that HD had made an obvious mistake and so this complaint point was substantiated.

12. This Office considered the complaint as a whole partially substantiated.

13. HD accepted our recommendations: to apologise to the complainant; to take preventive measures against recurrence; to explain the inspection process to owners; to inform owners in writing of the reinstatement requirement, the quotation criteria and the addition of 20% as on-cost for work undertaken by the Department; and to ensure the issue of a proper quotation before executing the assignment.

This case highlights The Ombudsman's role in ensuring administrative fairness and wrongs are righted.

Summaries of Selected Investigated Cases

HOUSING DEPARTMENT (HD)

Case No. OMB 2001/3687

HD – estate management – (a) misleading the complainant during the sale of Home Ownership Scheme units; (b) showing favouritism towards the management committee of the owners' corporation; and (c) breaking its promise to maintain neutrality in voting on management matters of the estate – unsubstantiated

The complainant bought a Home Ownership Scheme ("HOS") flat under the "Option to Buy or Rent Scheme" offered by the Hong Kong Housing Authority ("HKHA"). He alleged that HD had misled prospective buyers by not alerting them that three other blocks in the same estate were public rental flats. HD also showed favouritism towards the chairman of the management committee of the owners' corporation. During a Lands Tribunal hearing brought by some owners against the management committee, HD's appointed property management agent ("PMA") sent a staff member to accompany the chairman, but not the owners, to the hearing. Despite its promise to remain neutral, HD had voted against proposals raised at an owners' meeting.

2. The complainant considered HKHA's role to have conflicted with HD's because the former was responsible for public housing policies while the latter for implementing those policies. He further alleged that HKHA and HD had deceived HOS flat owners as the design, facilities and management service of the HOS block and public housing blocks were identical.

Complaint (a)

3. According to its guide book on "Option to Buy or Rent Scheme", HKHA would choose blocks within a public housing estate for sale as HOS flats while retaining the remaining blocks for public rental housing. The sales brochure of the estate concerned stated that "part of the flats/buildings of the estate might be used as public rental housing". According to the layout plan attached to the brochure, other blocks within the development were marked as subsidized housing either for rent or sale.

4. Buyers should have read the guide book and sales brochure carefully before making their decision. This Office considered that HD had not misled the buyers. This complaint point was unsubstantiated.

Complaint (b)

5. In August 2001, over 5% of the owners of the HOS block requested the chairman of the management committee to convene an owners' meeting. As the committee failed to respond within the statutory time limit, the owners applied for an order from the Lands Tribunal to convene a meeting. A Tribunal hearing on the owners' application was held.

6. HD pointed out that as the PMA was chartered to work with the management committee in managing the estate, it had a duty to accompany the chairman to the hearing. The owners who made the application to the Tribunal did not represent all the owners. Thus, it was not unreasonable that the PMA did not accompany them at the hearing.

7. The Ombudsman considered HD's explanation reasonable. This complaint point was unsubstantiated.

Complaint (c)

8. The complainant alleged that despite its promise to remain neutral, HD voted against two proposals at the owners' meeting : namely, to install window bars along the corridors at HD's expense and to dissolve the management committee.

9. HD explained that the installation, as an improvement work, should be charged to the estate management fund. As an owner, HKHA had already paid its share of management fees and the proposal was unreasonable. Thus, the HD representative voted against it.

10. On the proposal to dissolve the management committee, HD pointed out that the owners could seek to replace individual incompetent members in accordance with the Building Management Ordinance instead of dissolving the whole committee. To do so might jeopardise the operation of the owners' corporation and management of the estate. In view of the implications, HD considered it justified to vote at the meeting.

11. This Office noted that HD had only promised to be neutral in general but not in all circumstances. HD had, therefore, not broken its promise. This complaint point was unsubstantiated.

Other allegations

12. This Office did not accept the complainant's allegations that HKHA and HD had conflicting roles. HKHA was an owner of the estate while HD, being its executive department, should represent its interests and participate in the management of the estate on its behalf.

13. We did not agree with the complainant that HOS flats should differ in design, facilities and management service from public rental housing. HKHA and HD had a duty to provide high-quality housing for public housing tenants. In fact, their efforts should be commended.

14. All points considered, this complaint was unsubstantiated.

15. Disputes between HD and individual owners in mixed rental/HOS developments might compromise the efficient management of the estates. The Ombudsman suggested that should all HOS flat owners so request, HD should consider amending the leases and the Deeds of Mutual Covenant ("DMC") to enable the owners to take over management of the HOS portion.

16. HD pointed out that leases and DMC were legal documents. Any modification required the consent of each and every owner, including the mortgagors. Divergent views and disputes were inevitable in the course of negotiation on any modification. A single DMC for the whole estate would ensure that all residents within it could enjoy the common facilities and that responsibility for management and maintenance would be equally shared by all concerned.

17. This Office considered that, although difficult, amending the lease and DMC would be the ultimate solution. For future mixed rental/HOS developments, the Department should consider the feasibility of splitting the lease and DMC in the light of the actual situation of individual estates.

This case highlights The Ombudsman's role in pointing out the facts when public officers are unjustly accused.

HOUSING DEPARTMENT (HD)

Case No. OMB 2002/0526

HD – debris removal charge – (a) being unfair to the small-flat owners by allowing the property management agent to set the debris removal charge at a flat rate; (b) allowing the property management agent to set the debris removal charge at an unreasonable level in violation of the Deed of Mutual Covenant; and (c) failing to take positive action on the excessive charge – partially substantiated

The complainant was a flat owner in a newly completed Home Ownership Scheme estate. In accordance with the Deed of Mutual Covenant ("DMC"), the debris removal charge ("DRC") should not be more than two months' management fees. As the property management agency ("PMA") had imposed a flat rate, he had paid more than his share. When approached, PMA ignored his protest. More than a year after lodging the complaint, HD had not given him any formal reply.

Complaint (a)

2. The debris removal contractor was selected by tender. HD and PMA had followed a long-standing practice in fixing the DRC at a flat rate. This Office considered that the volume of debris would normally be proportional to the size of a flat. In fact, the DRC was pegged to the size of the flats in public rental housing and private developments. Thus, this Office considered complaint point (a) substantiated.

Complaint (b)

3. HD had obtained the approval of Lands Department before raising the ceiling of the DRC from one month's management fee to two months. This ceiling was prescribed in the DMC.

4. DRC tender price for the entire estate was at a level comparable to that charged in nearby estates. The flat rate was determined by dividing the contractor's tender price by the number of flats in the estate. While the DRC in total was reasonable, the unit rate for the complainant and other small-flat owners had exceeded the level prescribed in the DMC. This Office, therefore, considered complaint point (b) partially substantiated.

Complaint (c)

5. The legal advice obtained by HD clearly pointed out that there was no legal basis to charge a flat rate. As the ultimate decision was taken by HD, it should admit responsibility, undertake remedial action and provide the complainant with a progress report without delay.

6. HD had taken 20 months to arrange with the PMA to refund the excess payment to owners. Although clearly inefficient, this was beyond the control of HD as the PMA was a commercial organisation. Hence, this Office considered complaint point (c) partially substantiated.

7. In conclusion, this complaint was partially substantiated.

8. HD had accepted our recommendations to issue guidelines to remind its staff not to follow established practice blindly but should adhere to the DMC.

This case highlights The Ombudsman's role in ensuring that wrongs are righted.

HOUSING DEPARTMENT (HD)

Case No. OMB 2002/0688

HD – payment of rent – delay in processing an application for autopay and unreasonably refusing the use of Payment by Phone to pay rent – substantiated

The complainant applied to the estate office to pay rent by autopay. Not getting any response from HD after three months, which was the normal processing time for autopay applications, the complainant applied for payment by Payment by Phone ("PPS"). The estate office accepted the application and issued a PPS Tenant Code. HD Headquarters then rejected the complainant's autopay application on grounds that a tenant could not use both payment methods simultaneously.

2. One month later, the complainant's PPS payment was disabled because the estate office had cancelled his Tenant Code without notice. HD had done so in the belief that the complainant might prefer autopay. In fact, the complainant had no intention to apply for autopay again.

3. The Ombudsman had the following observations and comments –

(a) HD had delayed the processing of the complainant's autopay application. Moreover, the normal processing time of three months was unduly long;

(b) HD staff did not inform the complainant about the cancellation of his PPS Tenant Code;

(c) HD should allow tenants to use both payment methods. When making payment by PPS, tenants had to input their data personally and so it was unlikely that tenants would make double payment; and

(d) HD's Easy Rent Payment pamphlet and related documents did not state that tenants could not use both PPS and autopay. HD owed tenants a clearer explanation.

4. The Ombudsman considered the complaint substantiated.

5. HD accepted the following recommendations from The Ombudsman –

(a) apologise to the complainant in writing;

(b) consider allowing tenants to use both PPS and autopay concurrently;

(c) revise the Easy Rent Payment pamphlet to explain the payment policy more clearly;

(d) speed up the processing of autopay applications and set a performance pledge; and

(e) ensure timely notification before cancelling any payment arrangement.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

HOUSING DEPARTMENT (HD)

Case No. OMB 2002/2726

HD – car park management – (a) failing to respond to a complaint by e-mail; and (b) failing to monitor the car park management contractor's enforcement against illegal parking in a public housing estate – partially substantiated

The complainant is a resident with a licence for overnight parking in an open car park of a public housing estate. He alleged that the car park management contractor had not taken adequate measures against illegal parking, viz. clamping vehicles loading and unloading in excess of 30 minutes without paying the parking charge. In addition, on several occasions, there was no attendant on duty at the car park entrance. He e-mailed his complaints to HD. Apart from an acknowledgement of receipt, HD did not reply.

Complaint (a)

2. HD admitted that the complainant's e-mails had been directed to the account of an ex-Housing Manager of the estate, Officer A. Following Officer A's departure, the post had been deleted and all the e-mails from the complainant were left unattended in his e-mail box. HD considered individual officers to be responsible for deleting their own e-mail accounts on departure but Officer A had not notified the Information Technology Division ("ITD"). The E-mail Co-ordinator of the Information and Community Relations Division ("ICRD") had checked the validity of the e-mail account before forwarding the complaints to Officer A's account.

3. This Office did not accept the views and arguments of HD. An office should not rely solely on a departing officer to update or delete his e-mail account. Moreover, the Estate Management Division ("EMD") to which Officer A belonged, had not asked ITD to delete his account upon deletion of his post. Hence, EMD was responsible for the mis-direction of the complainant's e-mails. Meanwhile, on receipt of the third e-mail complaint, the E-mail Co-ordinator noticed that there had not been any response from Officer A but he was not vigilant enough to react immediately. This Office considered both EMD and ICRD to be responsible for failing to take action on the complainant's e-mails. This complaint point was substantiated.

Complaint (b)

4. There was no dispute that some vehicles had entered the car park illegally, staying for almost an hour without being impounded. HD accepted that the car park contractor could exercise flexibility for the convenience of residents and visitors after taking into consideration the views of the Estate Management Advisory Committee ("EMAC"), an independent third party representing the residents. Nevertheless, HD had instructed the car park contractor to ensure the manning of the entrance at all times.

5. This Office took the view that whether the car park contractor was right in deciding that an additional 30 minutes should be given before impounding the vehicles called for value judgment. This was well supported by EMAC, HD and the property management contractor. There was also no evidence of unfairness in the impounding procedures or in implementation. Regarding monitoring of the car park contractor, this Office noted that its performance was subject to constant supervision by the EMAC and was assessed by HD on a bi-monthly basis. Appraisal reports indicated that the car park contractor had been performing satisfactorily in the past years. In this light, this complaint point was unsubstantiated.

Recommendations

6. HD accepted our recommendations for implementation : to apologise to the complainant, to review the system for e-mail account maintenance to ensure timely updating and to review the workflow of the E-mail Co-ordinator to ensure forwarding of e-mails to intended persons.

This case highlights The Ombudsman's roles in ensuring that wrongs are righted.

INTELLECTUAL PROPERTY DEPARTMENT (IPD)

Case No. OMB 2002/1609

IPD – processing of application – failing to handle properly the complainant's application to register a trade mark – substantiated

The complainant applied to the Trade Marks Registry ("the Registry") of IPD in April 2000 to register a trade mark ("trade mark A") under the Trade Marks Ordinance. In July, the Registry issued a "notice to advertise", directing the complainant to proceed with gazetting of the trade mark, which he did in August. On being notified by the Registry, the complainant paid the registration fee. In early November, the Registry informed the complainant that two days prior to his application in April 2000, the Registry had received a very similar application ("trade mark B"). Trade mark A was, therefore, wrongly accepted. The complainant filed an objection to the application of trade mark B but the Registry failed to resolve the issue speedily. The complainant considered the Registry negligent in handling his application.

2. When processing application for trade mark registration, the Registry would search through its register and the List of Pending Applications for any trade mark identical or similar to the application. The Department admitted that the case officer had failed to notice that trade marks A and B were "in conflict", i.e. exactly the same or very similar. This was because the wording and the graphic presentation of a trade mark were stored separately in the computer system. After comparing the wording, if the officer did not suspect any "conflict", the graphic presentation would not be checked.

3. When made aware of the oversight by an objection against the application of trade mark A, the Registry apologised to the complainant and admitted that his application had been wrongly accepted. In view of objections from both applicants, the Registry had to hold a hearing. Pending a ruling on the matter, the Registry would not proceed with the registration of either application.

4. This Office considered that there were obvious similarities in the English wording of the two applications. The graphic presentation of the applications should have been checked for "conflict". Failure to do so was clearly negligent of the officer concerned. This complaint was, therefore, substantiated.

5. The Ombudsman suggested that IPD remind staff to be more alert when handling applications for trade mark registration to prevent recurrence of similar incidents.

6. IPD accepted the conclusion and recommendations.

This case highlights The Ombudsman's role in ensuring that wrongs are righted.

LABOUR DEPARTMENT (LD)

Case No. OMB 2001/3366

LD – labour dispute – (a) handling the complainant's case records unfairly; (b) failing to provide assistance in referring the complainant's claim to the Labour Tribunal – partially substantiated

The complainant reported to LD that her foreign domestic helper ("the employee") left her employment without serving any notice. She had indicated that she would claim from the employee one month's salary in lieu of notice. LD arranged a conciliation meeting for both parties but no settlement was reached.

2. The complainant noted that LD had stamped the words "Case referred to Labour Tribunal" on the employee's file and "Case settled" on hers. She requested LD to assist her in filing a claim with the Labour Tribunal ("Tribunal"). LD advised her that in the memo referring the case to the Tribunal at the employee's request, it was stated that the complainant would counter-claim the employee. The complainant could, therefore, make her own case when the employee filed her claim with the Tribunal.

Complaint (a)

3. LD pointed out that if both parties had filed a case separately to the Department before conciliation, one investigation officer would be assigned to handle both cases. A separate file would be opened for each party. A record of the conciliation would be kept in the first file but not the other. A cross reference to the first file would be marked on the second file. When referring the case to the

Tribunal, the first file would be stamped with "Case referred to Labour Tribunal" to differentiate from the second file which would be stamped with "Case settled". This differentiation aimed to prevent double counting of cases referred to the Tribunal and to reduce the amount of paper work. Moreover, the two parties did not have to file their claims in person with the Tribunal.

4. This Office could not accept LD's explanation. The words "Case settled" implied that the case had been resolved, thus the complainant had reason to gain the impression that LD closed her case before arriving at a solution. Whilst this procedure was not satisfactory, there was no evidence that LD had shown favouritism towards the employee. Meanwhile, LD had replaced the mark "Case settled" by more neutral words such as "Action in file No. …".

5. The Ombudsman, therefore, considered this complaint point unsubstantiated.

Complaint (b)

6. Under section 24 of the Labour Tribunal Ordinance, it was for the Tribunal, and not LD, to decide whether the claims from the two parties should be joined. In response to the complainant's request, LD's staff should have explained this arrangement clearly to her and let her decide whether to file a separate claim to the Tribunal, instead of advising her to counter-claim when the employee filed her claim.

7. The Ombudsman considered this complaint point substantiated.

8. The Ombudsman concluded that, overall, the complaint was partially substantiated.

9. The Ombudsman made the following recommendations to the Commissioner for Labour –

(a) to review arrangements for referral to the Tribunal, ensuring that requests to file claims from both the employer and the employee were treated fairly; and

(b) to review its staff training so as to enhance their knowledge on the provisions of the Labour Tribunal Ordinance, the referral procedures and the technique of impressing upon both the employer and the employee that they would be fairly treated.

10. LD accepted our recommendations.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

LANDS DEPARTMENT (Lands D)

Case No. OMB 2001/3906

Lands D – land control – delaying to fell a withered tree – substantiated

In June 2001, the complainant requested a District Office ("DO") of the Home Affairs Department to fell a withered tree. Following joint site visits with Agriculture, Fisheries and Conservation Department ("AFCD") and the complainant, DO referred the request to the District Lands Office ("DLO") of Lands D for action. However, up to December 2001, no action was taken and DLO had not informed the complainant of progress.

2. Lands D did not have any performance pledge on felling trees. According to standing instructions, the case officer had to conduct a site inspection to verify the situation. If there was immediate danger, the case would be referred to AFCD. When a tree posed no immediate danger but needed felling, AFCD's approval would be sought.

3. DO referred the case to DLO in late June 2001, followed by a telephone call and a memo in July. AFCD also wrote in August 2001 to recommend felling of the tree. However, no action was taken by DLO's case officer until late August 2001 when another officer picked up the case and liaised with AFCD. In November 2001, arrangement was made with the district term contractor to fell the tree.

4. This Office noted that in another case, DLO had conducted a site visit with the district term contractor within 20 days upon receipt of the request. In this light, there had been delay in processing the complainant's request.

5. We also noted that AFCD had given positive professional advice on felling the withered tree in August and September 2001. However, DLO still requested written confirmation from AFCD on two occasions in November 2001. This Office considered these further exchanges a waste of time and resources.

6. The Ombudsman considered the complaint against Lands D substantiated and recommended the Department –

(a) to apologise to the complainant;

(b) to review its procedures on the handling of referrals, to specify that interim reply should be issued to notify the referring department or the party requesting assistance; and

(c) to set up a referral register and conduct periodical review of outstanding cases, to ensure that no case was left unattended or overlooked.

7. Lands D agreed that there had been delay, but explained that tree felling carried a low priority with them and that the tree in question posed no immediate danger to the public. Nevertheless, it would consider implementing this Office's recommendations.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency and that wrongs are righted.

LANDS DEPARTMENT (Lands D)

Case No. OMB 2001/3996

Lands D – recovery of Government charges – (a) inefficiency in recovery of Government rent; (b) overcharging Government rent; and (c) failing to answer an enquiry – partially substantiated

The complainant was the owner of a flat in a multi-storey building. In May 1997, Lands D sent him a demand note for the shortfall of Government rent for January 1992 to June 1997. The complainant queried the belated demand. Since he had already paid the Government rent for March 1997 to June 1997, he wondered if there had been a double charge. He telephoned Lands D to enquire, but the reply was not satisfactory.

Complaint (a)

2. The building was redeveloped in 1991 on eight land lots. The Government rent for each of these lots was calculated according to lease conditions and the rates for different lots were different.

3. Upon redevelopment of the site, the rateable values of some of the lots were revised upwards. The Rating & Valuation Department ("RVD") notified Lands D in June 1993 of the new rateable value to be used for revising the Government rents for three lots, with retrospective effect from January 1992. Due to an oversight, Lands D continued to charge the old rent for these lots.

4. When the error was discovered, Lands D sent the complainant in May 1997 a demand note for the difference in rent payable for the period between January 1992 and June 1997. The complainant queried the belated demand and asked for review. Without replying, Lands D issued a reminder in May 1999. It was not until November 2001 that Lands D finally replied to the complainant.

5. This Office noted that Lands D had taken four years to revise the Government rent, and another four years to recover the shortfall. Thus, The Ombudsman considered complaint point (a) substantiated.

Complaint (b)

6. The complainant had settled a demand note from the Treasury in respect of three lots, covering the period between March 1997 and December 1998. However, the demand note under complaint, from Lands D, was in respect of another three lots. There was, therefore, no over-charging and so The Ombudsman considered complaint point (b) unsubstantiated.

Complaint (c)

7. The complainant alleged that the staff who handled his telephone call had failed to answer his queries about a demand note and just referred him to another department for clarification. We noted that the demand note in question originated from the Treasury. It was not unreasonable for Lands D to refer the complainant to that department for clarification. The Ombudsman considered complaint point (c) unsubstantiated.

8. Overall, the complaint against Lands D was partially substantiated. As Lands D had not overcharged the complainant, The Ombudsman suggested that the complainant should settle the outstanding charges if he had not already done so.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency and that wrongs are righted.

LANDS DEPARTMENT (Lands D) and HOME AFFAIRS DEPARTMENT (HAD)

Case Nos. OMB 2002/0020
OMB 2002/2230

Lands D – short-term tenancy – (a) inefficiency in processing an application to change the terms of a short-term tenancy; (b) unnecessary consultation on the application; and (c) rejection of application for reasons that should have been clarified two years ago – partially substantiated

HAD – consultation – (b) unnecessary consultation on a proposed change of terms of a short-term tenancy – partially substantiated

An athletic association ("the Association") held a short-term tenancy ("STT") at a nominal annual rental of $1.00 for the use of a sportsground in the town centre. The Association applied to a District Lands Office ("DLO") of Lands D to amend the terms of the STT to include a golf driving range.

2. DLO examined the application in consultation with Government departments concerned including the District Office ("DO") of HAD. After 26 months, several rounds of inter-departmental meetings and numerous exchanges of correspondence, the application was rejected on grounds of nuisance, safety, fire hazard and light glare.

Complaint (a)

3. Inter-departmental consultation was necessary but we noted that some of the exchanges between DLO and departments were repetitive and thus unnecessary, thereby causing delay. However, the delay was partly due to the Association's failure to honour some of the terms of its original proposal and to respond promptly to DLO's requests for improvement. This Office considered this complaint point against Lands D partially substantiated.

Complaint (b)

4. DLO and DO had consulted the local community on the proposed golf driving range. The Owners' Corporations ("OCs") of the residential estates near the playground were thrice consulted. We considered that the repeated consultation with the OCs could have been avoided had the earlier rounds of consultation been conducted properly and more thoroughly. This Office, therefore, considered this complaint point against Lands D substantiated. HAD was also partly responsible. Hence, this complaint point was also partially substantiated.

Complaint (c)

5. We noted that DLO's letter of refusal to the complainant only summed up the comments from departments and the outcome of DLO's efforts to address the problems and gave no reason for refusal. We considered that had DLO been more decisive and not prolonged the consultation process, the Association could have been informed much earlier. This Office, therefore, considered this complaint point against Lands D partially substantiated.

Conclusion and Recommendations

6. The Ombudsman considered that overall, the complaint against Lands D was partially substantiated and HAD partly responsible for complaint point (b). She recommended that the Director of Lands consider streamlining the procedures and devising a performance pledge for the processing of different categories of STT. She also recommended that the Director of Home Affairs remind staff to conduct consultation only when necessary and be more thorough when doing so.

This case highlights The Ombudsman's role in ensuring the public sector continues to improve quality and efficiency and that wrongs are righted.

LANDS DEPARTMENT (Lands D) AND HOUSING DEPARTMENT (HD)

Case Nos. OMB 2001/3084
OMB 2001/3085

Lands D and HD – land control – failing to take enforcement action against an unauthorised structure – substantiated

The complainant had lodged a complaint with a District Lands Office ("DLO") under Lands D against unauthorised building works. DLO told him that the complaint had been referred to the Squatter Control Office ("SCO") of HD for follow-up action. During various telephone calls, SCO repeatedly told the complainant that they were not responsible and did not know why DLO had made the referral.

2. At a site inspection, DLO found unauthorised building works being carried out at a squatter hut bearing a squatter control survey number. In addition, vehicles were parked on a piece of agricultural land. As parking of vehicles on agricultural land did not violate the land lease, DLO referred the matter to Planning Department ("Plan D"). After issuing an advisory notice to the owner of the squatter hut with the unauthorised works, DLO requested SCO as the authority for squatter clearance, to follow up. DLO informed the complainant accordingly, adding that joint enforcement action with HD would be taken, if necessary.

3. Plan D had asked for the identity of the vehicle owners but received no response from DLO.

4. SCO warned the squatter hut owner verbally, advising him to apply to DLO for permission to carry out the building works. The owner submitted an application, enclosing a copy of a licence issued in 1921 by the then authority. SCO referred the documents to DLO. Assuming that DLO had to take time to consider the application, SCO did not take any enforcement action. DLO rejected the application as it was submitted after commencement of construction and urged SCO to take enforcement action. SCO verbally warned the owner several times, telling him to submit his application to DLO direct.

5. HD and Lands D could not come to an agreement on whether the licence issued in 1921 was valid. HD argued that DLO should be responsible for clearing unauthorised structures constructed with permanent materials on lots covered by a land licence. DLO disagreed because the number and area of the unauthorised structures exceeded that permitted by the licence. DLO held that HD should be responsible as the unauthorised structures had a squatter control survey number.

6. This Office had the following comments –

(a) DLO had not responded to Plan D's enquiry. While DLO considered that it had no enforcement responsibility, it had told the complainant that it would take joint enforcement action with HD. This was improper and misleading; and

(b) SCO had not acted properly. It had repeatedly requested the owner to apply to DLO direct while knowing that DLO had rejected the application. SCO had evaded enforcement responsibility on the pretext that DLO was processing the application.

7. This Office agreed that enforcement action often involved complicated and time-consuming administrative and legal procedures. However, Government departments should be positive, proactive and practical. They should also understand each other's roles and try to resolve cases together speedily, instead of finding excuses to evade responsibilities. Thus, The Ombudsman considered the complaint substantiated.

8. Both Lands D and HD had taken appropriate follow-up action on the following recommendations –

(a) to set up a mechanism to facilitate co-ordination, clarify responsibilities and keep complainants informed of the results of their discussion; and

(b) to instruct staff to improve their service attitude, be proactive and not evade responsibilities.

This case highlights The Ombudsman's role in ensuring that wrongs are righted.

LANDS DEPARTMENT (Lands D), HOME AFFAIRS DEPARTMENT (HAD), DRAINAGE SERVICES DEPARTMENT (DSD), TRANSPORT DEPARTMENT (TD) AND HIGHWAYS DEPARTMENT (Hy D)

Case Nos. OMB 2000/2865
OMB 2000/2866
OMB 2001/0049
OMB 2001/0050
OMB 2001/1481

Lands D, HAD, DSD, TD and Hy D – land control – (a) failing to take proper action on an unauthorised vehicular access (Lands D – partially substantiated; HAD, DSD, TD and Hy D – unsubstantiated)

HAD – consultation – (b) refusing to accept the validity of the decision of a village meeting – unsubstantiated

HAD and DSD – flood control – (c) failing to take proper action on a flooding problem caused by an unauthorised vehicular access crossing over a portion of an existing open channel – unsubstantiated

HAD – flood control – (d) failing to take proper follow-up action on a complaint about flooding problem – unsubstantiated

The complainant, a village representative, complained to a District Office ("DO") of HAD against the construction of an unauthorised vehicular access on Government land. DO referred the complaint to a District Lands Office ("DLO"). After posting a warning notice on site, DLO made no rectification. Considering that the vehicular access posed a safety hazard to the villagers and aggravated the flooding problem of the village, the complainant lodged a complaint with this Office against Lands D and HAD, and later also against DSD and TD.

2. During the investigation, this Office found out that part of the vehicular access was constructed by Hy D on behalf of a developer. Hy D was then included as a complainee organisation.

Complaint (a)

Lands D

3. Although Lands D had responded promptly to the complaint by posting a warning notice, it did not prescribe procedures or guidelines for the construction of vehicular access on Government land. The DLO concerned, being the approving authority, had not made clear whether it had approved the application. The Department argued that the approval was just a conditional one and was subsequently revoked. However, the decision was not conveyed to Hy D, other departments and the complainant. Complaint point (a) would have been avoided if DLO had acted properly in approving the construction of vehicular access on Government land.

4. The Ombudsman considered this complaint against Lands D partially substantiated.

HAD

5. HAD had promptly referred the complaint to DLO for action, fulfilling its liaison role. The Ombudsman considered the complaint against HAD unsubstantiated.

DSD, TD and Hy D

6. DSD, TD and Hy D had done their part by providing expert opinions/information to facilitate DLO to handle the complaint.

7. The Ombudsman considered the complaint against these Departments unsubstantiated.

Complaint (b)

HAD

8. HAD stated that the DO was never informed of the village meeting. On the other hand, the complainant was not sure if he had given a copy of the village meeting notes to DO. He indicated there was no need to pursue this point further and The Ombudsman agreed.

Complaint (c)

HAD and DSD

9. DO had referred the complaint to DSD, the authority on public drainage system, to take follow-up action. DSD explained that the flooding might have arisen from inadequacy of the local village drains in intercepting the surface runoff from the village to the public ditch. The Department agreed to step up its regular inspections and desilting works at the ditch. As both Departments had properly handled the complaint, the Ombudsman considered this complaint unsubstantiated.

Complaint (d)

HAD

10. DO had taken necessary follow-up action and liaised with the complainant to obtain the consent of the private lot owners to implement the proposed drainage improvement works.

11. The Ombudsman considered this complaint against HAD unsubstantiated.

Recommendations

12. The Ombudsman made the following recommendations to Lands D –

(a) find a satisfactory solution to dispose of or rectify the vehicular access and inform the complainant of the outcome;

(b) issue guidelines on the handling of applications to build vehicular access on Government land; and

(c) review, in consultation with the responsible Bureau, the working procedures for inter-departmental co-ordination and liaison on such applications.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

LEISURE AND CULTURAL SERVICES DEPARTMENT (LCSD)

Case No. OMB 2001/0611

LCSD – unauthorised coaching activities – failing to take proper action to stop such activities – substantiated

The complainant alleged that some swimming lanes and training pools for use by the general public in a public swimming pool complex were occupied by swimming clubs for coaching, thus obstructing other swimmers. However, the lifeguards at the pool turned a blind eye to these activities and did not intervene. Nor did LCSD take any action to stop swimming clubs from conducting unauthorised coaching activities.

2. Our staff conducted a site inspection at the swimming pool as well as at another LCSD pool and found the situation as reported by the complainant. It was evident that many organisations wanted to hire swimming lanes for training and demand often exceeded the supply. Some swimming clubs, failing to secure swimming lanes, would instruct their class to pay for admission as ordinary swimmers and then gathered at a designated point at the pool-side for their swimming lessons. However, such practice would cause nuisance to other swimmers.

3. According to current policies, LCSD would lease out some of the swimming lanes in its pool complexes to swimming clubs and relevant bodies while the public could use the remaining lanes in the pool. The Department pointed out that according to the Public Swimming Pools Regulation (the Regulation), no person within the precincts of a swimming pool, except with the permission of the Department, should engage in commercial activities, including swimming lessons by individual instructors. Offenders were liable to penalty. If LCSD staff found any swimming club conducting lessons in a pool without permission, they would immediately advise it to stop. If the advice was not heeded, they would order the instructors and learners to leave the pool.

4. At one of the public swimming pools in July 2001 alone, a total of 168 verbal warnings were issued, but no one was asked to leave the pool or prosecuted. According to LCSD, swimming lessons involving commercial activities would be deemed as violation of the Regulation. However, LCSD staff often found it difficult to provide evidence for enforcement. We believed that even when LCSD officers advised against them, some instructors would still not stop their coaching activities as they had already taken instruction fees from the learners. Unless LCSD took further action to drive out of the pool complex those who refused to comply despite repeated advice, such irregularities would continue.

5. We considered that as the enforcement agency, LCSD should actively and strictly enforce the Regulation when anyone was seen conducting unauthorised coaching activities. Coaching activities conducted by swimming clubs in public swimming lanes obstructed other swimmers. LCSD should, for deterrent to others, consider prosecuting those refusing to comply even after repeated advice.

6. The Ombudsman considered that LCSD had failed to seriously enforce the Regulation to stop unauthorised coaching activities by swimming clubs in public swimming lanes. The complaint was, therefore, substantiated.

7. This Office put eight recommendations to the Director of Leisure and Cultural Services. The main points were –

(a) to urge swimming clubs to comply with the Regulation and require that they conduct commercial swimming lessons in hired swimming lanes only and that if lanes had not been hired, the learners might be ordered to leave;

(b) to be more positive in dealing with non-compliance and invoking the Regulation and seeking legal advice on cases for prosecution; and

(c) to step up the supervision on the activities in public swimming pools and encourage swimming clubs to use other swimming pools and facilities available for hire.

8. After the investigation report was issued, we received a letter from an association of swimming coaches querying our findings and comments above as unreasonable. A letter sent to the Chief Executive further criticised us for requesting "LCSD to strictly enforce the law to deter swimming clubs from using public swimming areas for coaching".

9. We acknowledged that the demand for public swimming pool facilities was very high. LCSD should, therefore, be impartial and strike a balance between the needs of various sectors in a bid to allow swimming clubs to continue their coaching without affecting the rights of individual swimmers to enjoy the facilities.

10. To clarify our position and recommendations, The Ombudsman also presented views to the Chief Executive to reiterate our stance.

11. LCSD subsequently adopted new measures to actively implement our recommendations for improving the management of swimming pools and to ban unauthorised coaching activities. It decided to prosecute those offenders who refused to take the advice.

12. Meanwhile, LCSD had set up a working party to review the policies on the hiring and management of public swimming pools as well as the allocation of swimming lanes in order to make recommendations for improvement.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency and that wrongs are righted.

LEISURE AND CULTURAL SERVICES DEPARTMENT (LCSD)

Case No. OMB 2002/0534

LCSD – library services – improper procedures for handling of records of borrowing books – substantiated

The complainant discovered that on two occasions when she returned the books to the library, the "borrower's record" in the computer was not updated. To ensure that she would not be charged for not returning books on time, she made two enquiries with the library and was told to complete a Claimed Return Form ("CRF"). However, the library did not inform her when the books were subsequently located.

2. LCSD explained that in 2001/02, more than 89,000,000 transactions of borrowing and returning of books had been handled by public libraries. It was impossible to issue receipts on return of books. In the same year, only 8,431 readers claimed to have returned the books borrowed, out of which 5,513 books were subsequently found.

3. This Office had the following observations and comments on the procedures for handling returned library books –

(a) if the barcode scanner made an error in reading the barcode, or if the scanner was not used properly, the borrower's record would still show the books as not returned;

(b) readers would not know if the borrowing record was properly updated in the absence of a receipt. They could not check the computer record as the monitor faced the library staff;

(c) if the computer failed to update the borrower's record, a reader could only complete the CRF to claim that a book had been returned;

(d) while the CRF stated that "the library reserved all its right to claim any loss", readers were not informed of the result of the follow-up action taken; and

(e) LCSD's internal guidelines did not prescribe when missing books should be written off. Thus, LCSD would have difficulties in knowing when to inform readers of its follow-up action or to take action against readers falsely claiming to have returned their books.

4. The Ombudsman considered the complaint substantiated.

5. The Ombudsman made seven recommendations, e.g. LCSD should offer an explanation to the complainant, consider allocating resources to improve the procedures and

guidelines on the return and writing off of books, enhance the computer system, and facilitate readers to make on the spot check of their borrowing record.

6. LCSD accepted the findings of the investigation and the recommendations. The Department undertook to strengthen training and supervision of its staff and enhance communication with readers. The Department also agreed to consider allocating resources to acquire new monitors to enable staff and readers to check borrowing records for greater efficiency and transparency of operations.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

LEISURE AND CULTURAL SERVICES DEPARTMENT (LCSD)

Case No. OMB 2002/0580

LCSD – salary payment – failing to arrange salary payment properly – partially substantiated

The complainant was a former employee of LCSD. Before her resignation, her request for payment of her final salary by cheque was turned down. Later, LCSD asked the complainant to repay an amount which had been paid into her account by mistake. The complainant could not arrange repayment as her account had already been frozen by the bank. LCSD issued a reminder, stating that it would seek to recover the amount by legal means.

2. Considering that LCSD was at fault in ignoring her request for payment by cheque, the complainant pointed out that the Department was making her responsible for its mistake and giving her stress.

3. LCSD explained that staff salary had always been paid by autopay. Although there was no guideline on handling requests to change the payment method, requests would be considered on individual merits.

4. As there was no evidence or record to show that the complainant had made the request for payment by cheque, we could not comment on this point.

5. However, LCSD admitted that the complainant’s office had failed to act in accordance with the normal procedures of issuing a “termination of contract” notification to discontinue the payment of salary to the complainant, thus resulting in the overpayment. At the same time, LCSD had not been notified about the freezing of the complainant’s account. The Department apologised to the complainant for the inconvenience caused.

6. LCSD considered it necessary to recover the overpayment from the complainant. In its letter to the complainant, the Department had clearly admitted that the overpayment was due to an error in its accounting procedures. It had not sought to shift the responsibility for the mistake onto the complainant.

7. This Office considered it inappropriate for LCSD not to stop payment of salary immediately on the complainant's resignation. Nonetheless, the Department had not tried to shift responsibility. All points considered, this complaint was partially substantiated.

8. LCSD accepted our recommendations, as follows –

(a) to explain to the complainant why the Department had failed to stop salary payment on her resignation;

(b) to formulate guidelines for staff on the processing of requests to change the method of salary payment; and

(c) to enhance communication among different units of the Department to prevent recurrence of the mistake.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency and that wrongs are righted.

OFFICIAL RECEIVER'S OFFICE (ORO) AND TRANSPORT DEPARTMENT (TD)

Case Nos. OMB 2002/2914
OMB 2002/2915

ORO – (a) inappropriately requesting TD to freeze the transfer of ownership, thus prohibiting the sale of a vehicle – unsubstantiated

TD – (b) failing to keep the complainant informed of ORO's request to freeze the transfer of ownership while allowing the renewal of vehicle licence – partially substantiated

In December 1999, creditors petitioned to wind up Company A. In June 2000, Company A sold a light goods vehicle to Company B. In July 2000, a winding-up order was issued and the Official Receiver was appointed as provisional liquidator of Company A. Three days later, the complainant bought the vehicle from Company B and completed the transfer of ownership with TD the following day. In July 2001, TD renewed the licence.

2. In July 2002, the complainant sold the vehicle but ownership could not be transferred to the new owner and the transaction was aborted. TD informed the complainant that transfer of ownership had been frozen since August 2000.

Complaint (a)

3. Under the Companies Ordinance, "any disposition of the property of the company … made after the commencement of the winding up (i.e. when creditors have filed a winding up petition to the court), shall, unless the court otherwise orders, be void." ORO's request to TD in August 2000 to freeze the transfer of ownership of the vehicle until further notice was legal and reasonable. Complaint point (a) was, therefore, unsubstantiated.

Complaint (b)

4. Upon receipt of ORO's request, TD had input the information into its computer system. In December 2000, TD received a letter from the liquidator appointed by the court requesting the freezing of licence renewal. TD placed this letter underneath ORO's letter in the file without taking any specific action regarding the request.

5. When the complainant applied for licence renewal in July 2001, TD staff only noticed ORO's request to freeze the transfer of ownership but overlooked the liquidator's request to freeze even licence renewal. Thus, the licence was renewed.

6. Apart from oversight, TD did not have any procedure to update its computer system on the freezing of vehicle ownership transfer or licence renewal. In addition, no special reference was marked on letters with such requests. However, TD had no obligation to keep vehicle owners informed of such requests. This Office, therefore, considered complaint point (b) partially substantiated.

Conclusion

7. The Ombudsman considered the complaint partially substantiated.

8. TD accepted our recommendations and apologised to the complainant. In addition, the Department would review its procedures on the handling of requests to freeze ownership transfer and licence renewal as well as its filing system. TD would also consider means to enable more information to be captured in its computer system to facilitate easier retrieval of data.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

SOCIAL WELFARE DEPARTMENT (SWD)

Case No. OMB 2001/2989

SWD – disability allowance – delaying the processing of application – substantiated

The complainant applied for disability allowance at a SWD Social Security Field Unit ("SSFU"). She was informed that her application had been approved but did not receive any payment even after ten months.

2. SWD confirmed that on receipt of the medical assessment confirming the complainant's eligibility, the Medical Social Service Unit ("MSSU") had sent the document by fax and by hand to the SSFU concerned. However, SSFU did not have any record of receipt of the document or the assessment with the complainant's new address that MSSU subsequently sent by fax. In the absence of the medical assessment, the application was not approved.

3. We could not establish why the document was not delivered. However, there was no doubt that SSFU did not realise that the document was missing as MSSU did not require acknowledgement of receipt. At the same time, MSSU did not keep any record of documents sent by fax.

4. In conclusion, The Ombudsman considered the complaint substantiated.

5. SWD followed up our recommendations by issuing a written apology to the complainant and approving her disability allowance. MSSU would include an acknowledgement slip when despatching medical assessments, in addition to the computerised record already in place for capturing the delivery and receipt of medical assessments.

This case highlights The Ombudsman's role in ensuring that wrongs are righted.

TRANSPORT DEPARTMENT (TD)

Case No. OMB 2002/0463

TD – application – refusing to refund deposits paid to reserve vehicle registration marks – unsubstantiated

The complainant paid a deposit of $1,000 each to reserve four vehicle registration marks ("VRMs") for sale by auction. Before submitting his applications, he had checked TD's website and made telephone enquiries but there was no indication that deposits were not refundable.

2. At the auction, all the marks reserved by the complainant were unsold and were, therefore, allocated to him. As he only wanted one VRM, he requested TD to refund the deposit he paid for the remaining three VRMs. TD turned down his request.

3. According to TD, the deposit for a reserved VRM would be disposed of by one of the following methods –

(a) refunded in full if the VRM was auctioned to another bidder;

(b) accounted for in the actual sum to be paid if the applicant was the successful bidder; or

(c) taken as a special fee for the reserved VRM if it was unsold and allocated to the applicant at the auction.

4. While only the first and second disposal methods were described in TD's application form, website and pamphlets, the Department claimed that the complainant should be aware of the third disposal method. The acknowledgement letter issued on receipt of an application stated, *inter alia*, that the VRM would be allocated to the applicant at a special price of $1,000 if it was not sold at the auction.

5. The complainant counter-claimed that TD had not issued the acknowledgement letter. In response, TD produced three independent witnesses who had submitted applications at the same time as the complainant. All three attested that they had received acknowledgement letters from TD.

6. In view of these findings, The Ombudsman concluded that the complainant could have been made aware of the refund arrangement. Thus, the complaint was unsubstantiated. TD had since revised its publicity materials and application form to avoid misunderstanding.

This case highlights The Ombudsman's role in pointing out the facts when public officers are unjustly accused.

URBAN RENEWAL AUTHORITY (URA)

Case No. OMB 2002/1322

URA – management of shopping arcade – (a) delaying to process a complaint against a tenant selling non-specified merchandise item; (b) allowing another tenant, out of favouritism, to sell merchandise beyond those specified in the Licence Agreement; and (c) not notifying the complainant of the new arrangement on the sale of additional merchandise – partially substantiated

The complainant, a jade trader, was a tenant in an URA shopping arcade. She had complained to an URA Assistant Manager ("AM") against another tenant ("the other tenant") for breaching the Licence Agreement ("the Licence") by selling jade in addition to the specified business. When called for progress, the AM would say either the case was being followed up or it was necessary to check the terms of the Licence. Three months later, her request to meet the AM at URA headquarters was refused. Her case was then referred to a Senior Manager ("SM") but there was still no development. At an interview two months later, the SM told her that URA would enforce the licensing conditions and prohibit the other tenant from selling jade.

2. Half a month later, the complainant learned that all tenants, except her, had received notice from URA that they could apply to sell an additional item over those specified in the Licence. The other tenant had been allowed also to sell jade.

Complaint (a)

3. URA did not have any established policy or guidelines on the types of merchandise to be sold by tenants or the handling of requests to change the merchandise. On being approached by the complainant, URA staff was confused. While they did not take any action against the other tenant, they promised to enforce the Licence. The AM refused to meet the complainant because her accompanying friend was too emotional.

4. The complaint was not settled for six months because of the lack of guidelines on the handling of complaints. URA had not handled the complaint properly. This Office considered complaint point (a) substantiated.

Complaint (b)

5. We could not find any evidence that the decision to allow the other tenant to sell jade had been made out of favouritism. The relaxation aimed to assist all tenants in a difficult economic situation. The Licence Agreement between URA and tenants did not provide exclusive right to sell specified merchandise items. Relaxation did not, therefore, violate the Licence. This Office considered complaint point (b) unsubstantiated.

Complaint (c)

6. Staff distributing the notice to tenants was also responsible to deliver URA's reply to the complainant. Assuming that the notice was enclosed in the reply, he did not hand her a copy of the notice. When alerted, he immediately made good the mistake. We considered the error to have arisen from misunderstanding, not intentional omission. The complaint point (c) was unsubstantiated.

Conclusion

7. Overall, this Office considered the complaint partially substantiated.

8. URA accepted and implemented all of our recommendations, viz. to apologise in writing to the complainant, formulate guidelines on handling complaints and train staff to enhance their communication and complaint handling skills. URA would also review the development and management strategies of the arcade to prepare for setting out a policy on how to determine and process the types of merchandise on sale by tenants.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency and that wrongs are righted.